

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2345 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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RAISINHBHAI LAKIDAS HEIR OF KALIDAS KOIJIBHAI

Versus

AMARSINH NATHABHAI  
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Appearance:

MR SURESH M SHAH for Petitioner  
NOTICE SERVED for Respondent No. 1  
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/08/2000

ORAL JUDGEMENT

#. Though notice of Rule has been served to the respondent, no one has put appearance on behalf of the respondent.

#. In the present petition, this Court has issued Rule, Returnable on 16th January, 1990 and by way of interim relief, respondent is directed to maintain status quo as on today on 4th December, 1989. In the present petition, Annexure-D is the order passed by the Gujarat Revenue Tribunal in Revision Application No.1300 of 1984 dated 30th June, 1988 which is challenged by the petitioner.

#. The learned Advocate, Mr. M. S. Shah, has submitted that the Gujarat Revenue Tribunal has committed gross error in coming to the conclusion that the petitioner has resorted to section-29 only and not section-84. Mr. Shah has also pointed out that the observations made by the Tribunal that section-32(1B) itself provides restoration and hence, the order of the Deputy Collector, Dabhoi passed in this case is illegal. The said observation and conclusion of the Gujarat Revenue Tribunal is wrong and apparent error committed by the Tribunal. Mr. Shah submitted that section-32(1B) is not applicable to the present case. Similarly, he also pointed that section-29 is also not applicable to the present facts of the case. Mr. Shah submitted that section-32(1B) relating to whether a tenant who was in possession of the land on the appointed day i.e. 15th June, 1955 and who on account of he being dispossessed of such land or any part thereof by the landlord at any time, before the specified date i.e. 3rd March, 1973, otherwise then in the manner provided in section-29 on any other provisions of this Act, is not in possession of such land or any part thereof and such land or part thereof is in the possession of the landlord or his successor in interest on the said date and such land or part thereof is not put to non-agricultural use on or before the said date then the Mamlatdar shall hold an enquiry suo motu or on the basis of the application of the tenant made within the prescribed period. The learned Advocate, Mr. Shah, submitted that the appointed date is 15th June, 1955 and specified date is 3rd March, 1973. He submitted that on 11th January, 1977, as per the averments made in paragraph-3 of the petition that the respondents had filed a Special Civil Suit No. 8 of 1987 in Vadodara Civil Court against father of the petitioner and therein, he obtained interim injunction against the father of the petitioner on 11th January, 1977 and on the basis of said injunction, the respondent has restrained the petitioner from using of this land by the father of the petitioner and taking disadvantage of the said interim injunction, the father of the petitioner was dispossessed by the respondent from this land of which the father of the petitioner was a tenant and

thereafter, the respondent withdrew the said suit from the Civil Court. Therefore, the question of dispossessing to the petitioner's father was arisen from 11th January, 1977 i.e. subsequent to 3rd March, 1973, the specified date. Therefore section-32(1B) is not applicable to the facts of the present case. Mr. Shah also submitted that section-29 which provides that a tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply in writing for such possession to the Mamlatdar. On receipt of such application by the Mamlatdar, under subsection-1 of section-29, the Mamlatdar shall after holding an enquiry pass such an order as he deem fit. Section-29(1) is relating to the tenant and section-29(2) is relating to the landlord and for that the Mamlatdar has to examine by holding an enquiry and to adjudicate the rights between the landlord and tenant. Therefore, Mr. Shah submitted that the provision of section-29 is also not applicable because it requires determination or adjudication by an enquiry held by the Mamlatdar, but in the present case, according to Mr. Shah, such an enquiry is not necessary because right of the petitioner is already established in pursuance to the order passed by the Mamlatdar, Dabhoi by an order dated 22nd April, 1983 in Case No. 5957 of 1982. Therefore, Mr. Shah submitted that even section-29 is also not applicable and only provisions of section-84 is available to the petitioner and that was rightly resorted by the petitioner. Section-84 of the Tenancy Act has provided that any person unauthorisedly occupying or wrongfully in possession of any land, the transfer of which either by act of parties or by the operation of law, is invalid under the provisions of this Act, the management of which has been assumed under the said provisions or to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such a person may be summarily evicted by the Collector. In view of this provision, Mr. Shah submitted that third party may cover the landlord also. Section-84 is a summary eviction from the person who is having illegal possession or unauthorised occupation of the land in question or wrongfully in possession of any land. In view of this section, Mr. Shah submitted that in pursuance to the order passed by the Mamlatdar on 22nd April, 1983, the petitioner was held to be a tenant and against that order, the respondent has challenged before the Deputy Collector, Dabhoi, being Tenancy Appeal No. 31 of 1984 wherein the appeal filed by the respondent has been rejected by the Deputy Collector on 28th July, 1984. Against that decision, a Revision Application No.1430 of

1984 was filed and that has been also rejected by the Gujarat Revenue Tribunal on 19th October, 1987. Thereafter, the petitioner has moved to the Deputy Collector and the Deputy Collector has passed an order on 3rd August, 1984 directing that the respondent should be evicted from this land under section-84 of the Bombay Tenancy Act and the land should be handed over to the present petitioner and in furtherance of the same, the Deputy Collector has issued direction by letter dated 10th August, 1984 to the Mamlatdar and ALT Dabhoi for handing over the possession to the petitioner by evicting the respondents and on the basis of the same, the Mamlatdar and ALT, Dabhoi has issued an order dated 20th September, 1984 upon the parties herein in the matter for remaining present on 13th October, 1984 at the local place and the possession may be handed over and in presence of the Circle Inspector on that day, failing which, further steps shall be taken in the matter. Against the said order of the Deputy Collector directing handing over the possession of the land in question to the petitioner, the respondent has preferred a Revision Application No. TEN.BA.1300 of 1984 and the Tribunal after hearing the parties in the matter of this revision application allowed the same by taking a technical view of the matter that the proceedings under section-84 are not competent and the petitioner should have taken proceedings under section-32(1B) of the Act for restoration of the possession and set aside the order of the Deputy Collector directing handing over the possession of the land in question to the petitioner. Mr. Shah submitted that in such a situation, whether section-29 or section-84 or section-32(1B) is applicable or not, that question has been examined by this Court and Bombay High Court in unreported decision. The said unreported decisions have been referred by the Apex Court in the case of Vallabhbhai Nathabhai Vs Bai Jivi and Otrs. reported in AIR 1969 SC page-1190. In the said decision of the Apex Court, the words "any person unauthorisedly occupying or wrongfully in possession. A landlord who under an invalid surrender is in possession of the land is, no doubt a person in unauthorised occupation or is wrongfully in possession. He relied upon paragraph no.9 of the said decision wherein the unreported two decisions, one from Gujarat High Court and another from the Bombay High Court, have been referred. It is observed by the Apex Court that there are two unreported decisions, one by the High Court of Gujarat and another by the High Court of Bombay to which also an attention was drawn. In Shankerlal Vs Hariya Wagha, Special Civil Appeal No.8 of 1961 dated 22nd August, 1961, and second, Special Civil Appeal No.207 of 1956 in

the case of Krishna Mahar Vs Husain Miya decided on 19th June, 1956, Bombay. Considering the facts of both the cases, it has been observed that under section-29, subclause-1, a tenant could apply to the Mamlatdar for possession, but that required that the right to possession must arise "under the provisions of the Act". If the tenant did not seek to enforce a right arising under any of the provisions of the Act, but claimed possession on his own title as a tenant, section-29(1) would not apply and his remedy would be under section-84 only. It is held that when a tenant claimed possession not relying upon any incident of his contract of tenancy nor on any provisions of the Act, but on his own title to possession, that is, to protect his possession as a tenant against a trespasser section-84 and not section-29(1) would apply even though the land, the possession of which he claimed was the land of which he was a tenant and the trespasser was his landlord. What the tenant in such a case was seeking to do was not to enforce his right as a tenant under the provisions of the Act, but he was enforcing his right against third parties, viz. the petitioners in that case, who were in wrongful occupation. The tenant was claiming possession not under the provisions of the Act, but on his own title, albeit as a tenant, against a person who had no title to ownership or possession in the land and therefore, section-29(1) did not apply to such a case. Consequently, the Bombay High Court has also observed that there was a clear distinction between an application under section-29(1) and one under section-84, for, under section-29(1) whereas the tenant would be claiming the right to possession under the provisions of the Act, under section-84 he would be claiming the right to possession not under any of the provisions of the Act, but on his own title to possession as a tenant. Such an application could be even against a person who was his landlord qua the land in question, if such landlord was in unauthorised occupation or wrongful possession. Relying upon these two unreported decisions, one from the Gujarat High Court and another from the Bombay High Court, the learned Advocate, Mr. Shah, submitted that the revisional authority, Gujarat Revenue Tribunal, passed an order dated 30th June, 1988 and has committed gross error which is apparently on the face of the record that in the present case, section-29 is applicable and not section-84 is applicable. That the view of the Revenue Tribunal is wrong and considering the fact that the father of the petitioner was declared a tenant by order dated 22nd April, 1983 under the proceedings of section-70(b) of the Tenancy Act and he was permanent tenant and challenge to that decision by the respondent

has been failed and thereafter, the revision also, the respondent has been failed.

#. In the result of that proceedings, ultimately, the Mamlatdar and ALT has passed an order which has been challenged in revision and therefore, according to his submission, the order passed by the Gujarat Revenue Tribunal dated 30th June, 1988 is required to be set aside.

#. I have perused the entire order passed by the Gujarat Revenue Tribunal and I have considered the relevant provisions under section-32(1B), section-29 and section-84 of the Tenancy Act. According to my opinion, in the present case, under the proceedings of section-70(b), the father of the petitioner was declared a tenant of the land bearing Survey No.30 admeasuring 1 Acre 15 Gunthas of Village Kuvervada of Dabhoi Taluka. The said decision dated 22nd April, 1983 passed by the Mamlatdar and ALT was challenged by the respondent in Tenancy Appeal No.31 of 1984, that appeal was dismissed on 20th July, 1984 and even revision application was also rejected on 19th October, 1987. Therefore, the father of the petitioner was declared permanent tenant by the authority and that order is not further challenged to the higher forum. Therefore, the right has been already crystallised and established by the petitioner and in guise of obtaining interim stay in the civil suit, the respondent obtained illegal possession of the land from the petitioner on 11th January, 1977, that is, subsequent to the specified date, 3rd March, 1973 and therefore, section-32(1B) is not applicable and section-29 is also not applicable because there is no need for determination of any right between the landlord and tenant because right of the petitioner has already been crystallised and established under the previous proceedings of section-70(b) of the Tenancy Act up to the revision application. Therefore, when there is no any scope of enquiry or adjudication or determination between the 2 claims of the landlord and tenant, then naturally, section-84 is applicable to the facts of the present case which deal with the summary eviction against unauthorisedly occupation or wrongfully in possession of any land by any third party. In that circumstances, the Collector is having power of summary eviction of such person. Therefore, in the present case, section-84 is applicable and proceedings which has been initiated by the Deputy Collector under section-84 by passing order on 3rd August, 1984 and further direction by letter dated 10th August, 1984 to the Mamlatdar and ALT Dabhoi for handing over the possession to the petitioner by evicting

the respondent and on that basis, the Mamlatdar, Dabhoi has passed an order on 20th September, 1984, that order has been rightly passed within the provision of section-84 and view taken by the revisional authority is apparently illegal and there is an error committed by the Gujarat Revenue Tribunal by order dated 30th June, 1988 and therefore, the said order is required to be quashed and set aside.

#. In view of these facts, the order dated 30th June, 1988, Annexure-D, passed by the Gujarat Revenue Tribunal in Revision Application No.1300 of 1984 is hereby quashed and set aside. Rule is made absolute. No order as to costs.

(H.K. Rathod, J.)

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